

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

In Re:)	20-21768
)	
BORNEO ESTRADA,)	Chapter 7
)	
Debtor.)	Hon. Judge: GOLDGAR
)	(LAKE)

NOTICE OF MOTION

The following persons or entities who have been served via electronic mail:

U.S. Bankruptcy Trustee: USTPRegion11.ES.ECF@usdoj.gov

David Paul Holtkamp, Office of the U.S. Trustee: David.Holtkamp@usdoj.gov

Ilene Goldstein, Chapter 7 Panel Trustee: ifgcourt@aol.com

The following persons or entities who have been served via first-class U.S. mail:

Borneo Estrada, 1310 Almaden Lane, Gurnee, IL 60031

PLEASE TAKE NOTICE that on **July 16, 2021**, at **11:00 A.M.**, I will appear before the Honorable Judge **GOLDGAR**, or any judge sitting in that judge's place, and present the **Motion to Strike New Argument**, a copy of which is attached.

This motion will be presented and heard electronically using Zoom for Government. No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following:

To appear by video, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and password.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828- 7666. Then enter the meeting ID and password.

Meeting ID and password. The meeting ID for this hearing is **160 817 7512** and the password is **623389**. The meeting ID and password can also be found on the judge's page on the court's web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

PROOF OF SERVICE

The undersigned certifies that copies of this Notice and attachments were served to the listed persons or entities, if service by mail was indicated above, by depositing same in the U.S. Mail at Wheeling, Illinois 60090, on or before July 9, 2021, at 5:30 p.m., with proper postage prepaid, unless a copy was provided electronically by the Bankruptcy Court.

DATE OF SERVICE: July 9, 2021

/s/ Robert C. Bansfield Jr.

Robert C. Bansfield Jr., A.R.D.C. #6329415

Attorney for the Debtor
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MOTION TO STRIKE NEW ARGUMENT

NOW COMES the Debtor, **Borneo Estrada**, by and through his attorneys, David M. Siegel & Assoc., LLC, to present this Motion, and in support thereof states as follows:

- 1) Jurisdiction is proper and venue is fixed in this Court with respect to these parties.
- 2) Debtor filed a petition for relief under Chapter 7 of Title 11 U.S.C. on December 19, 2020. Ilene Goldstein was appointed the Chapter 7 Panel Trustee in this case.
- 3) On June 2, 2021, the U.S. Trustee, by and through his attorney, filed a Motion to Dismiss Chapter 7 Case (“M.T.D.”) or in the alternative, allow the Debtor to voluntarily convert the case to a Chapter 13 case. *See* Docket Number 29.
- 4) The U.S. Trustee stated that a totality of the circumstances test for Debtor’s Chapter 7 bankruptcy supports a finding of abuse under 11 U.S.C. §§707(b)(1) and 707(b)(3). *See* M.T.D. at p.1.
- 5) On June 4, 2021, this Court entered a briefing schedule for the M.T.D. Debtor was given until June 25, 2021, to file a response to the M.T.D. and the U.S. Trustee was given until July 9, 2021, to file a reply. *See* Docket Number 31. On June 25, 2021, Debtor, by and through his attorneys, filed a response to the M.T.D. *See* Docket Number 33. On July 8, 2021, the U.S. Trustee filed a reply to Debtor’s response. *See* Docket Number 35. However, in his reply, the U.S. Trustee raised a new issue.

6) “‘A reply brief is for replying, not for raising a new ground,’ or for advancing a position that could have been advanced in the opening [motion].” *Chef v. Alexanian*, No. 10 C 1399, 2 (N.D. Ill. May. 31, 2011); citing *Hussein v. Oshkosh Motor Truck Co.*, 816 F.2d 348, 360 (7th Cir. 1987) (Posner, J. concurring); see also *Shlay v. Montgomery*, 802 F.2d 918, 922 n.2 (7th Cir. 1986). “Delaying the presentation of an argument until the reply brief in order to get the last word is not only unfair to one's opponent — it is a form of ‘sandbagging’...” *Chef* at 2; citing *Otto v. Variable Annuity Life Insurance. Co.*, 134 F.3d 841, 854 (7th Cir. 1998). If an issue is brought up for the first time in a reply brief, it is “forfeited.” *U.S. v. Boyle*, 484 F.3d 943, 946 (7th Cir. 2007); See also *R.J. Reynolds Tobacco Co. v. Cigarettes Cheaper!*, 462 F.3d 690, 701 (7th Cir.2006); *J.S. Sweet Co. v. Sika Chem. Corp.*, 400 F.3d 1028, 1035 n. 2 (7th Cir.2005).

7) In this case, the U.S. Trustee did raise a new issue in his reply brief. The U.S. Trustee argues that the payments Debtor makes towards his motorcycle constitute abuse under 11 U.S.C. §707(b), See Reply pgs. 2, 9-10, Docket Number 35. Nowhere in the M.T.D. does the U.S. Trustee raise the issue that the Debtor’s motorcycle expense constitutes abuse under 11 U.S.C. §707(b), see generally Docket Number 29. This is a new issue that was not mentioned in the original M.T.D. and Debtor did not have a chance to respond to.

8) Since the U.S. Trustee has raised a new issue in his reply to Debtor’s response, Debtor respectfully requests that this Court strike any argument that U.S. Trustee makes in regards to Debtor’s motorcycle expenses.

WHEREFORE, the Debtor, **Borneo Estrada**, prays that this Honorable Court enter an Order to Strike New Argument and for other such relief as the Court deems fair and proper.

Respectfully Submitted,

/s/ Robert C. Bansfield Jr. _____
Robert C. Bansfield Jr., A.R.D.C. #6329415
Attorney for the Debtor

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